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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,146	10/22/2007	Yvan Verra	377/9-2182	9489
28147	7590	08/29/2008		
WILLIAM J. SAPONE COLEMAN SUDOL SAPONE P.C. 714 COLORADO AVENUE BRIDGE PORT, CT 06605			EXAMINER FOREMAN, JONATHAN M	
			ART UNIT	PAPER NUMBER
			3736	
			MAIL DATE	DELIVERY MODE
			08/20/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/560,146

**Applicant(s)**

VERRA ET AL.

**Examiner**

JONATHAN ML FOREMAN

**Art Unit**

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/88)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 6 is objected to because of the following informalities: claim 6 states, "said capsules being different one each other...". Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 – 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,391,004 to Garvin in view of U.S. Patent No. 5,478,328 to Silverman et al.

In regard to claims 1 - 6, Garvin discloses a device (Figure 1) for taking liquid samples (Abstract) including an element shaped as a hollow needle (10), having at one end a prehension body including a handle (50) and an insertion end at the other end, the hollow needle forms at its prehension end a hollow perforating rod, protruding into a housing of the prehension body to pierce a watertight diaphragm of a vacuum chamber (Col. 3, lines 18 – 20). Garvin discloses a removable cap (40) of the needle perforating rod, to provide a pushing surface across the housing (Col. 4, lines 6 – 8). The vacuum chamber (80) has an outer shape fit to be inserted in the housing of the prehension body, and is capable of providing a pushing surface across the housing. Garvin discloses a series of vacuum chambers shaped as capsules, the capsules being different from each other (Col. 3, lines 24 – 26). Garvin discloses the needle having an insertion end, but fails to disclose the insertion end being closed at its top and having lateral aspiration holes. However,

Silverman et al. disclose a device for taking liquid samples having a hollow needle that is closed at its top and includes lateral aspiration holes (Figure 3g). The diameter of the holes is smaller than the inner diameter of the needle (Col. 7, lines 26 - 28) and the axis of each hole forms an angle of at least 90 degrees (Figure 3g). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the hollow needle as disclosed by Garvin to include a closed insertion end having lateral aspiration holes as taught by Silverman et al. in order to reduce the risk of transmitting disease to individuals exposed to used needles (Col. 5, lines 2 - 4)

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN ML FOREMAN whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/J. M. F./  
Examiner, Art Unit 3736

/Max Hindenburg/  
Supervisory Patent Examiner, Art Unit 3736